

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Legal Division

San Francisco, California

Date: December 15, 2005

Resolution No. L-323

RESOLUTION

RESOLUTION AUTHORIZING DISCLOSURE OF COMMISSION CONSUMER PROTECTION AND SAFETY DIVISION (UTILITIES SAFETY BRANCH) INVESTIGATION RECORDS PURSUANT TO THE CALIFORNIA PUBLIC RECORDS ACT BY CHARLES P. STONE ON BEHALF OF DIRECTIONAL BORING SERVICES, INC. SEEKING DISCLOSURE OF COMMISSION STAFF INVESTIGATION RECORDS RELATING TO A MAY 7, 2003 ACCIDENT INVOLVING THE FACILITIES OF PACIFIC GAS & ELECTRIC COMPANY IN THE CITY OF CUPERTINO, CALIFORNIA. (INCIDENT NO. G20030507-03.)

BACKGROUND

Charles P. Stone of the law firm of Roger, Scott & Helmer LLP, representing Directional Boring Services, Inc. ("Directional Boring"), requested records of the California Public Utilities Commission ("Commission") pursuant to the California Public Records Act relating to the agency's investigation of an incident that occurred on May 7, 2003, when an employee of Directional Boring, installing an electrical duct parallel to an existing 2" IPS plastic gas main for DBA Electric, bored into Pacific Gas & Electric's ("PG&E") gas main. Leaking gas accumulated in the house at 10101 Imperial and an explosion occurred and interrupted service to seventeen customers for eighteen hours. No fatalities were reported. A PG&E employee suffered temporary loss of hearing due to the explosion. And a neighbor tripped and sprained her ankle while running away from the explosion.

On August 3, 2005, Commission staff responded to the request for public records with a letter informing the requesting law firm that, although Commission staff has completed its investigation, staff could not disclose the investigative record in the absence of authorization by the Commission. On August 29, 2005, Charles P. Stone of Roger, Scott, & Helmer LLP, appealed to the Commission in a letter for the release of the records. This resolution constitutes the Commission's response to the request for public documents served on behalf of Directional Boring.

DISCUSSION

The requested records are “public records” as defined by the California Public Records Act (PRA). (Government Code § 6250 et seq.) The California Constitution, PRA, and discovery law, favor disclosure of public records. The amendments to the California Constitution made by the recently enacted Proposition 59 elevate to a constitutional level the public’s right to access government information. (California Constitution, Article 1, § 3 (a).) While these amendments expressly preserve existing privileges and exemptions against disclosure of government records, they also impose new rules of statutory construction. Statutes, court rules, and other authority limiting access to information must be broadly construed if they further the people’s right of access, and narrowly construed if they limit the right of access. (California Constitution, Article 1, § 3 (b)(2).) Finally, these amendments require that any new statutes, court rules, or other authority that limits the right of access be adopted with findings demonstrating the interest protected by the limitation and the need to protect that interest. (Id.)

The PRA provides that a justification for withholding a public record in response to a PRA request must be found either among the specified exemptions listed in the Act, or a showing that, on the facts of a particular case, the public interest in confidentiality clearly outweighs the public interest in disclosure.¹

The Commission has exercised its discretion under Public Utilities Code § 583, and implemented its responsibility under Government Code § 6253.4 (a), by adopting guidelines for public access to Commission records. These guidelines are embodied in General Order 66-C. General Order 66-C § 1.1 provides that Commission records are public, except “as otherwise excluded by this General Order, statute, or other order, decision, or rule.” General Order 66-C, § 2.2 (a) provides the most relevant exemption from mandatory disclosure under the PRA in this instance. Section 2.2 precludes staff’s disclosure of “[r]ecords or information of a confidential nature furnished to or obtained by the Commission ... including: (a) Records of investigations and audits made by the Commission, except to the extent disclosed at a hearing or by formal Commission action.” Section 2.2(a) covers records provided by PG&E to Commission staff confidentially in the course of its investigation, as well as Commission records containing this confidential information.

General Order 66-C § 2.2(a) limits staff’s ability to disclose Commission investigation records in the absence of disclosure during a hearing or a Commission order authorizing disclosure. For this reason, staff denies most initial requests seeking Commission

¹ The fact that records may fall within a PRA exemption does not preclude the Commission from authorizing disclosure of the records. Except for records which may not be disclosed by law, PRA exemptions are discretionary, rather than mandatory, and the Commission is free to refrain from asserting such exemptions when it finds that disclosure is appropriate. See Government Code §6253 (e); *Black Panthers v. Kehoe* (1974) 42 Cal. App.3d 645, 656.

investigation records. Such a denial usually notes the option under General Order 66-C § 3.4 to appeal to the Commission for disclosure of the records. If an appeal is received, staff prepares a draft resolution for the Commission's consideration.

There is no statute specifically forbidding the disclosure of the Commission's safety investigation records. Portions of such records which include personal information may be subject to disclosure limitations in the Information Practices Act (IPA) (Civil Code § 1798 et seq.).² However, the IPA authorizes disclosure of personal information "Pursuant to the California Public Records Act." (Civil Code Section 1798.24 (g).)

The portions of Commission safety incident investigations subject to the IPA primarily include information concerning the identity of Commission staff and other government employees investigating the incident, the identity of utility employees reporting the incident, DBA Electric employees, the homeowner, and the fireman who filed the fire incident report. Disclosure of the personal information in the incident investigation records at issue in response to the current records request is consistent with the IPA.

During the past twelve years the Commission has ordered disclosure of records concerning completed safety incident investigations on numerous occasions. The Commission has found that disclosure of such records will not interfere with the Commission's investigations, and may lead to discovery of admissible evidence and aid in the resolution of litigation regarding the accident/incident under investigation.³ Most of these resolutions responded to disclosure requests and/or subpoenas from individuals involved in electric or gas utility incidents (accidents), the families of such individuals, the legal representatives of such individuals or families, or the legal representatives of a defendant, or potential defendant, in litigation related to an accident/incident.

The Commission has on numerous occasions found that Public Utilities Code § 315, which expressly prohibits the introduction of accident reports filed with the Commission, or orders and recommendations issued by the Commission, "as evidence in any action for damages based on or arising out of such loss of life, or injury to person or property," offers utilities sufficient protection against injury caused by the release of requested investigation records.

² The portions of Commission safety incident investigations subject to the IPA primarily include information concerning the individual or individuals killed or injured in the incident giving rise to the safety investigation, and the identity of and any statements made by witnesses to the incident who are identified in the records.

³ See, e.g. Commission Resolutions L-240 *Re San Diego Gas & Electric Company*, rehearing denied in D.90-05-020 (1993), 49 CPUC 2d 241; L-248 *Re Lopez 1* (April 26, 1995); L-249 (August 11, 1995); L-255 *Re Murrillo* (1997); L-257 *Re Johnson* (1997); L-260 *Re Banda* (1997); L-262 *Re Peralta and Boyadjian* (1997); L-263 *Re Schwab* (1997); L-265 *Re Johnson 2* (1998); L-271 *Re City of Pinole* (1998); L-272 *Re Johnson 3* (1998); L-273 *Re Disney* (1998); L-275 *Re Lopez* (1998); L-278 *Re Turner* (1999); L-279 *Re Rodriguez* (1999); L-280 *Re Kimball* (1999); L-286 *Re EBMUD* (1999); L-289 *Re Cornelius* (2000); L-290 *Re Grady Plumbing* (2000); L-291 *Re Morales* (2001); L-292 *Re White* (2001); L-295 *Re Maldonado-Colin* (2001); L-297 *Re Kuno's Grading* (2002); L-298 *Re Wilson* (2002); and L-300 *Re Teegardin* (2002).

If safety incident reports filed by utilities with the Commission, or records of an investigation completed by Commission staff, contain any confidential personal information, or other privileged or exempt information, the redaction of which is permitted by law, such information need not be disclosed. No information in the current incident investigation file requires redaction.

Viewing the current request for records within the context of these laws and policies, we note that Commission staff has completed its investigation of this incident and closed the incident administratively. Thus, disclosure of investigation records will not interfere with staff's ability to complete its incident investigation responsibilities.

The only personal information in the records requested here consists of references to the identity of Commission staff and other government employees investigating the incident, the identity of utility employees reporting the incident, DBA Electric employees, the homeowner, and the fireman who filed the fire incident report.

COMMENTS ON DRAFT RESOLUTION

The Draft Resolution of the Legal Division in this matter was mailed to the parties in interest on November 9, 2005, in accordance with PU Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. No comments were filed.

FINDINGS OF FACT

1. The Commission received a request for public documents from the law firm of Roger, Scott & Helmer LLP, representing Directional Boring, seeking Commission staff records, concerning the investigation of an incident that occurred on May 7, 2003, when an employee of Directional Boring installing an electrical duct parallel to an existing 2" IPS plastic gas main for DBA Electric, bored into a PG&E gas main.
2. Commission staff has completed its investigation of this incident and closed the incident administratively. Thus, disclosure of investigation records will not interfere with staff's ability to complete its incident investigation responsibilities.
3. The requested records include personal information in the form of references to the identity of Commission staff and other government employees involved in investigating the incident, the identity of utility employees reporting the incident, DBA Electric employees, the homeowner, and the fireman who filed the fire incident report.
4. The public interest favors disclosure of the requested investigation records.

CONCLUSIONS OF LAW

1. The documents in the requested investigation file and report are public records as defined by Government Code § 6250 et seq.
2. The California Constitution favors disclosure of governmental records by, among other things, stating that the people have the right of access to information concerning the conduct of the peoples' business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny. Furthermore, the California Constitution also requires that statutes, court rules, and other authority favoring disclosure be broadly construed, and that statutes, court rules, and other authority limiting disclosure be construed narrowly; and that any new statutes, court rules, or other authority limiting disclosure be supported by findings determining the interest served by keeping information from the public and the need to protect that interest. California Constitution, Article 1, Section 3 (b)(1) and (2).
3. The general policy of the California Public Records Act favors disclosure of records.
4. Justification for withholding a public record in response to a Public Records Act request must be based on specific exemptions in the Public Records Act or upon a showing that, on the facts of a particular case, the public interest in nondisclosure clearly outweighs the public interest in disclosure. (Government Code § 6255.)
5. The Commission has exercised its discretion under Public Utilities Code § 583 to limit staff disclosure of investigation records in the absence of formal action by the Commission or disclosure during the course of a Commission proceeding. (General Order 66-C § 2.2 (a).)
6. Public Utilities Code § 583 does not limit the Commission's ability to order disclosure of records.
7. Public Utilities Code § 315 prohibits the introduction of accident reports filed with the Commission, or orders and recommendations issued by the Commission, "as evidence in any action for damages based on or arising out of such loss of life, or injury to person or property."

ORDER

1. The Commission's records concerning the investigation of an incident that occurred on May 7, 2003 when an employee of Directional Boring was installing an electrical duct parallel to an existing 2" IPS plastic gas main for DBA Electric and bored into a PG&E gas main shall be disclosed in response to the public records request made on behalf of Directional Boring.

2. The effective date of this order is today.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting of December 15, 2005 and that the following Commissioners approved it:

STEVE LARSON
Executive Director